STATE OF MICHIGAN
IN THE SUPREME COURT

Appealed from:
Oakland County Circuit Court
Juvenile Division
Circuit Court Case No. 07-739244-NA

Court of Appeal Case No. 318855

In re Nykyla McCarthy.

APPLICATION FOR LEAVE TO APPEAL

February 12, 2015

Susan L. Loveland (P66005)
Attorney for Respondent-Appellant
PO Box 431993
Pontiac, MI 48343
(248) 563-2061

NOTE: No fee required, appointed counsel.

STATEMENT OF APPEAL

Respondent-Appellant Tracy Reed had an appeal as of right with regard to the August 29, 2013 Order of the Oakland County Circuit Court terminating her parental rights to her child Nykyla McCarthy pursuant to MCL 600.308(1)(a), MCR 3.993(A)(2), and MCR 7.203(A)(1). The Court of Appeals affirmed the trial court's decision.

This court has jurisdiction pursuant to MCR 7.301(A)(2). Appellant is requesting that this Court reverse the Court of Appeal's 1/15/15 Order affirming the Oakland County Circuit Court order terminating her parental rights to Nykyla McCarthy.

The grounds for this appeal MCR 7.302(B)(5) in that a decision of the Court of Appeals is clearly erroneous and will cause material injustice or the decision.

QUESTIONS FOR REVIEW

I. DID THE STATE FAIL TO COMPLY WITH THE REQUIRED PROCEDURES AND VIOLATE MOTHER'S DUE PROCESS RIGHTS?

II. WERE THE STATUTORY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS PROVEN BY CLEAR AND CONVINCING EVIDENCE?

III. WAS THERE CLEAR AND CONVINCING EVIDENCE THAT TERMINATION OF PARENTAL RIGHTS WAS IN THE BEST INTERESTS OF THE CHILDREN?

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF FACTS

Introduction

The Department of Human Services ("DHS") filed a Petition for the court to take temporary jurisdiction over Mother's oldest daughter, Jasmine Nabers (DOB 1/19/1995) on April 4, 2009, and Jasmine was removed from the home. On January 26, 2010, DHS amended the Petition to include Mother's three other children, Nykyla McCarthy (DOB 06/02/1999), Kyle Reed (DOB 7/24/1997), and Robyn Reed (DOB 7/11/2005). After a jury trial on February 4-5, 2010, the court took jurisdiction of the four children. Jasmine continued in foster care and the other three children remained with Mother.

On April 27, 2010, the court adopted DHS's Parent-Agency Agreement ("PAA"). A series of review hearings and permanency planning hearings were held. Eventually, the other three children were removed from Mother's care. DHS filed a Petition to terminate mother's rights to the four children on March 29, 2011. After the trial and best interests hearings, the court found that there was a statutory basis to terminate Mother's rights to all four children, and that it was in the best interests of Jasmine, Kyle, and Robyn to terminate Mother's parental rights. The court entered an order terminating Mother's Parental rights to Jasmine, Kyle, and Robyn on January 17, 2012.[1] However, the court found that it was not in Nykyla's best interests to terminate Mother's parental rights and ordered that DHS continue further reunification efforts.

On March 5, 2012, the court adopted a new PAA with regard to Nykyla only. After two more review hearings and a permanency planning hearing, the court determined that DHS should file a supplemental Petition to terminate mother's parental rights.

On December 7, 2012 DHS filed a supplemental Petition for the court to terminate

[1] Mother appealed that order and this Court affirmed. COA Case No. 308818.

Mother's parental rights pursuant to MCL 712A.19b(3)(c)(i) (failed to complete PAA), (3)(g) (failed to provide proper care and custody), and/or (3)(j) (reasonable likelihood of harm if child is returned to Mother). The statutory basis trial was held on March 14, 2013, and the best interests hearing was held on May 1, July 15, and July 30 of 2013. The court issued an Opinion and Order on August 29, 2013 terminating Mother's right to Nykyla.

Initial Petition

Mother had been involved in neglect cases twice before, once after Mother had a "mental breakdown" in 2000 and again after Mother physically abused Jasmine in 2007. The precipitating incident this time was another physical altercation between Mother and Jasmine involving a cell phone. Nykyla and Kyle witnessed the fight and called the police. At the time, Mother and Jasmine each reported that the other was the initial aggressor. The Petition also alleged that there was no furniture in the family home.

March 5, 2012 - Review Hearing

A new PAA was presented at this court hearing. The goals in the PAA were for Mother to: (1) attend court hearings and maintain contact with the agency; (2) attend and participate in weekly individual therapy with an approved therapist; (3) have weekly telephone contact with Nykyla; (4) complete a home assessment through the Interstate Compact; (5) provide documentation of legal residence and up-to-date utilities; and (6) provide a verifiable source of income. Tr. 10-12 (March 5, 2012).

June 11, 2012 – Review Hearing

The court reviewed Mother's progress with the PAA. Mother had not provided proof of income. Tr. 6 (June 11, 2012). Mother had provided a lease. Tr. 7. The court indicated that it would "check that off the list in terms of what" Mother needed to complete. Id. The court ordered Mother to fax income verification within three business days. Tr. 10. The prosecutor indicated the utility papers were provided. Tr. 11.

The prosecutor indicated that the main concern was verifying the parenting class. Tr. 11. The DHS worker then detailed the steps she had taken to verify that it was a legitimate and suitable parenting class. Tr. 12-13. The court then stated that Mother decided to move to Georgia, knowing that it was going to make the reunification process more challenging. The judge stated, "frankly, I got to put the burden on you because I can't chase folks around Georgia." Tr. 15. The prosecutor agreed that the onus needs to be on Mother, further stating that the Interstate Compact paperwork would be going through shortly and that Mother would have to avail herself of classes approved by the DHS counterpart in Georgia, the Division of Family and Children Services ("DFACS"). Tr. 16. The court ordered Mother to provide proof of her parenting class within 14 days or take a new parenting class. Tr. 32.

The court noted that the home assessment had not been completed yet because Georgia had not scheduled it yet and that it was not Mother's fault. Tr. 17. DHS said that Mother would just have to wait for to contact her. Tr. 18.

With regard to visits, the DHS worker indicated that Mother needed to provide the worker with notice when she was coming to town so that the worker could accommodate the visits. Tr. 22-23.

In conclusion, the judge said, "I really don't want this be about like jumping through this hoop and jumping through this hoop. I want it to be if Ms. Reed's home is appropriate, safe and Nykyla can return to her and be cared for there, I'll sign that order." Tr. 30.

July 30, 2012 Review Hearing

Initially, the court indicated that it looked like there had been some progress. Tr. 5 (July 30, 2012). DHS had received verification of the parenting class. Tr. 5-6. Mother had submitted a lease and paid utilities bills. Tr. 6. With regard to employment, Mother did provide proof of employment in the form of her 2011 tax returns. Tr. 7.

With regard to the home study, DHS report indicated that there hadn't been a home study, but that wasn't because of Mother. Tr. 6. DHS indicated that there had been a home study completed, but it was not done by DFACS. Further, the worker stated that "DFACS still has to complete their home study because otherwise Nykyla could not be sent there." Tr. 6. At that time, the worker on the case, Ms. Johnson, stated that "I do have **a home study in my hands** done by a private agency in Georgia that -- I spoke with someone today. They assessed the home and found it to be -- I did -- the **residence is well suited for family occupancy**. . . . . **So there is a home study**."

Tr. 6-7 (emphasis added).

With regard to counseling, the court indicated that it would be comfortable with Mother continuing with the biblical counselor that she had been seeing, despite the fact that she was not a traditional therapist. Tr. 7. The court stated Mother should continue to her therapist the next 90 days. Tr. 14, 22.

With regard to visits, the DHS worker stated that Mother had not come to Michigan to see Nykyla enough. She only came in December. Further, when Mother was here, she did not spend enough time with Nykyla. The court stated that "I'm of the opinion that she should have had Nykyla basically every day that she was here. If you're only here twice a year, she needs to see her the entire time she's here." Tr. 10. Mother stated that she had come in December, February, and June. She saw Nykyla every day. Mother did her hair and went shopping with her. She also stated that she bought Nykyla a tablet, and that they Skype every day. Tr. 10-11. The court asked Mother to come up to Michigan once a month. Tr. 11. Mother indicated that she would try to do that, but that it might be a financial hardship. She spent $800 on the plane ticket to come to Nykyla's graduation. Tr. 11-12. The court responded that "I empathize to a certain extent, but that's the – while the proceedings are open [you removed] yourself to another state. That's the . . . frustration I have." Tr. 12 (emphasis added). The court ultimately asked Mother to do two face-to-face visits with Nykyla "that include hugs and shared meals and that type of thing" in the next reporting period. Tr. 26. However, the court added that "if they have to facilities for Skype, let's do Skype." Id.

The DHS worker at the time, Ms. Johnson, stated that, "It is the agency's position that serious consideration should be given to changing Nykyla's permanency plan not to terminating Ms. Reed's rights. And I want to be very clear about that. **I don't think that that is in Nykyla's best interest at this time**." Tr. 13 (emphasis added). The prosecutor indicated that they were "certainly not moving in the direction of termination of parental rights." Tr. 14 (emphasis added).

The court also said it was happy with the progress that Mother had made. "I feel like -- quite frankly I feel like more progress was made in the last reporting period than has been

made in a long time." Tr. 14. If Mother did what she asked her to do during that hearing, the court said it was "comfortable with reunification." Tr. 14-15. The court required Mother to: (1) have two face-to-face visits and ongoing telephone contact with Nykyla, (2) continue therapy with biblical counselor, and (3) pass a DFACS home study. Tr. 22. At that point, the court said it would consider reunification with in-home services. Id.

With regard to the DFACS home study, Mother immediately informed the court that it would take a long time to complete the home study and that she was not going to pass it because she had a felony on her record. Tr. 23. Despite that information, the judge did not alter her decision that DFACS had to do the home study. The judge indicated that the home study was to "make sure that the home is physically appropriate and space and clean and that type of thing," (Tr. 24) apparently disregarding the fact that the worker had just indicated that there was a home study saying that the residence was well-suited for family occupancy.

October 29, 2012 Permanency Planning Hearing

The tenor of the case changed again at the next hearing.

With regards to visits, DHS said they had not gotten any verification that Mother had visited Nykyla in Michigan, "like a copy of a plane ticket or anything to actually prove that mom was there." Tr. 6 (October 29, 2012). Mother indicated that she had been to Michigan twice, once by car and once by plane. Tr. 20. The court found that Mother had not met that requirement because the visits were not verified, although the court did not indicate how Mother could prove she made a car trip. Tr. 27.

With regard to therapy, the DHS worker indicated that Mother discontinued therapy in September, but that she had made good progress while she was doing it. Tr. 6, 25.

DHS also indicated that the home study was not passed due to "lack of cooperation and missing documentation," but that DFACS did not specify exactly what documents were missing. Tr. 27.

The court determined that DHS should file a petition to terminate Mother's rights. Her reasoning was that Mother could not verify her visits, that Mother discontinued therapy, and that Mother didn't pass a DFACS home study. Tr. 27.

March 14, 2013 Statutory Basis Trial

Lori Lambertsen, Foster Care Case Manager for Ennis Center for Children, testified. Her job is to provide case management services to children and their birth families by making referrals, and to monitor the Parent-Agency Agreements. Tr. 6 (March 14, 2013). She authored the Supplemental Permanent Wardship Petition for Nykyla McCarthy Tr. 7. Nykyla entered care on November 19, 2011 due to physical abuse allegations regarding her sister Jasmine. Id. Nykyla specifically was brought into care when Mother fled to Georgia with Nykyla and her sister. Tr. 8.

Mother was to complete a PAA. Mother needed to maintain emotional stability and demonstrate appropriate parenting skills, including engaging in appropriate visitation with Nykyla. Mother also needed to provide proof of legal and adequate income. She was also to provide proof of adequate housing and proof of income. Tr. 8. Further, she needed to go to counseling. Mother went for a year. However, Mother was supposed to continue in counseling until Nykyla was returned. Tr. 9-10. Lambertsen had gotten emails from the counselor stating that Mother had gone to therapy and that she had benefitted. Tr. 48-49. The therapist did not say that she thought further therapy was needed, and Lambertsen never specifically asked her. Tr. 49.

Mother completed parenting classes. Tr. 10, 48. However, Mother did not provide proof of legal source of income. Tr. 12. Mother did not make attempts to see Nykyla at all. Tr. 15. Mother had a valid lease. Tr. 36.

The DFACS home study was denied. The report merely stated that Mother was not cooperative. Lambertsen stated that Nykyla would have been returned home if the home study was completed. Tr. 15. When Lambertsen got on the case in August, the plan was to return Nykyla to Mother in Georgia. Id.

Lambertsen thought that Mother's rights should be terminated because Nykyla needed permanency. Tr. 16.

On cross, Lambertsen reiterated that she did not know the specific reason that Mother failed the home study. She was aware that Mother had told DHS that she was going to fail it. Tr. 19-23. She tried to get additional information about the home study numerous times. Tr. 25. She did not know whether Lansing sent a request for a home study of a parent or a home study for a relative licensing, but did state that Mother would have failed a relative licensing study in Michigan. Tr. 25. After Mother's home study was denied, Georgia said they could not reopen the case to do another home study. Tr. 29. In order to reopen the case, Ms. Reed would have to put in writing that she accepted responsibility for her non-compliance and was willing to provide whatever Georgia wanted her to do. Tr. 29. No one conveyed that information to Mother. Id.

Ms. Reed paid for her own home assessment to be done by a private agency, but Lambertsen stated that it's not acceptable. Tr. 32. She had not looked into whether the agency was an agency that generally contracted with DFACS because it didn't meet the Interstate Compact procedures regardless. Tr. 33 No one tried to reopen the case because Mother said she

was moving back to Michigan. Id. Mother was told how to reopen the case two days before DHS recommended terminating Mother's rights. Tr. 34.

Mother told her that she visited on October 12th, but Lambertsen could not verify it because there were conflicting stories from relatives. Tr. 39. However, Nykyla stated that Mother visited her. Tr. 43. They did have frequent phone contact and communicated on Skype almost daily. Tr. 45-46. The communication was appropriate. Tr. 69.

On cross by the L-GAL, Lambertsen indicated that Mother was aware of some of the issues that Nykyla was having at school. Mother was notified that Nykyla had been suspended and they talked about it. Tr. 64.

Mother **Tracy Reed** then testified on her own behalf. Tr. 79. She stopped seeing the counselor because she had a scheduling conflict and they had moved on from counseling to more general biblical studies. Tr. 88. She had sufficient income.

With regard to the DFACS home study, Mother received a notice from DFACS that they had received a request to complete a home assessment as a possible relative placement. Tr. 91. DFACS told her that they couldn't do anything about it because that's how the request was sent. They explained to her that, since she had a felony and was on the central registry, her application was going to be denied. Tr. 98. The DFACS worker then gave her some phone numbers of contracted agencies so she could pay for an independent home assessment herself. Tr. 99-101. Originally, the DHS worker in Michigan stated that the independent home assessment would suffice because all they needed was to make sure there was enough room and a bed for Nykyla and food in the refrigerator. Tr. 101, 128. A few days later, however she said it would not be sufficient. Tr. 101-02. DFACS told Mother that the case was closed because they did not get Mother's medical records. Tr. 107. When Mother asked DHS whether she should just move

back to Michigan because DFACS denied her home study, the worker told her it was not necessary because they had everything they needed, including pictures, from the independent home study. Tr. 128.

Mother stated that she visited Nykyla in Michigan twice and maintained almost daily Skype contact with her. Tr. 112-115. Mother bought Nykyla a tablet so they could Skype and then replaced it when Nykyla lost it. Tr. 114.

Mother said she provided financial support for Nykyla as well. Tr. 115. She sent her a pre-paid debit card and would send money through Mother's father. Tr. 115.

The judge made statements from the bench. Tr. 153-157. See Exhibit 1. She did specifically state that she was not making official, full factual finding. Tr. 155.

May 1, 2013 Best Interests

Grace Anderson, Mother's counselor testified. Tr. 13. She met with Mother approximately 30 to 35 times. She indicated that she helped her deal with family issues, how to raise children in a proper manner, and how to rectify some of the issues that she had encountered in her prior days. They also discussed appropriate discipline. She stated that Mother realized she made a lot of mistakes and that she didn't want to make the same mistakes in the future. Tr. 15-16. She indicated that further counseling would be helpful when Nykyla came home. Tr. 17, 19. Mother would have an adequate support system in Georgia. Tr. 18. She had no concerns that Mother discontinued therapy because she was working, was in church, and had her plan together. Tr. 19. She believed that Mother would be able to take care of Nykyla if she were returned to her. She believed that Mother had learned and grown through her time with her. Tr. 21-23.

July 15, 2013 Continued Best Interests

Lori Lambertsen testified again. Tr. 7. She stated that she thought it was in Nykyla's best interests to have Mother's rights to be terminated. Nykyla has been in care for approximately two and a half years. She didn't have a relationship with Mother, mostly memories. Nykyla is at a delicate and very impressionable age where she needs structure and stability. She is starting to get in trouble at school. Mother has failed to provide those things for Nykyla. Tr. 7-8. She didn't believe that Mother would be able to provide those things in a short time because there's no evidence that she would be able to. DHS doesn't know where Mother lives or her current income. There was no communication with between Mother and DHS. The lack of stability affected her ability to form relationships with her foster parents, family, and friends. Not knowing whether Mother was going to be in her life was affected her negatively. Tr. 8

She did admit, however, that the crux of the case was the DFACS denial of her home study. Tr. 18. Her belief that Mother could not provide for Nykyla a safe and stable environment was the fact that there wasn't an approved home assessment. Tr. 24.

Mother and Nykyla's relationship was more like a friendship relationship. Tr. 26. Because they did not see each other face-to-face, they could not have a parent-child bond. Tr. 27. In order to have that kind of bond, Mother would need to discipline her appropriately and assist in her educational and emotional needs. Their phone conversations are not long and in depth. Lambertsen had not seen any kind of physical interactions in between them. Tr. 31. She did not see Mother take the steps that a parent needs to take in order to parent her child despite the fact that she was given an opportunity to do so.

Dr. Douglas Park testified. Tr. 36. It was his opinion that it was in Nykyla's best interests to terminate Mother's parental rights. He didn't think she could adequately parent her.

They had more of a friendship relationship. Tr. 42. He walked through his psychological evaluations. With regard to Nykyla, she had unpredictable behavior, and her emotions were hard to control. She was also passive-aggressive and pessimistic, with some depression. Tr 56-57. She did not follow directions, did not listen, and was disrespectful. Tr. 63. Nykyla was also getting in fights in school. Mother said the solution was for her to change schools. Dr. Park thought that would not be sufficient, which demonstrated that Mother did not have insight and had not made progress in terms of her parenting skills. Tr. 59-60. She continued to state that her children should not have been removed. Tr. 59. However, he did indicate that Mother told him that she would not use physical discipline, which was the issue that brought the case into care. Tr. 61. However, he thought that Mother would revert back to her original parenting style. Tr. 61. Even though he stated that Jasmine was indeed different from her other children, he indicated that Mother would treat them the same. Jasmine had problems fighting, running off with men, and going AWOL, but Nykyla had none of those problems. Tr. 63. Dr. Park also admitted that he had never spoken to Mother's therapist to see what progress she had made in counseling. Tr. 64.

Nykyla testified. She indicated that living in foster care was stressful to her because she wanted to go home to live with her mother. Tr. 69. She stated that she talked to her mother on the phone or via Skype almost every day. Tr. 69. She stated that she had seen her mother about once a month. Tr. 70. Nykyla indicated that she didn't tell her mother about her grades because they weren't that good and she wanted her mother to be proud of her. Tr. 73. She was also disappointed because she felt sad because she thought things were going well, but then she found out they weren't. Tr. 79. She was also annoyed because the worker was being negative about her mother and would "throw her under the bus." Tr. 80. With regard to her problems fighting

at school, she said that just by walking down the hall other students would want to fight her. She didn't want to fight, but she had to do something or else get called "stupid stuff" by her peers. Tr. 81-82. Again, she stated that she didn't want to tell her mother. When she eventually told her mother, she was ashamed. Tr. 82. Her mother would give her instructions on what to do differently. Tr. 82. She thought that her mother would discipline her verbally, not by hitting her. If her mother did hit her, she would tell someone. Tr. 83. She would feel comfortable living with her mother, and that is what she wanted to do.

On cross from the L-GAL, Nykyla indicated that she was never afraid of her mother and always wanted to go back home. Tr. 85. She had seen the fights between Mother and Jasmine, but Mother never got into those kinds of fights with herself or her brother. Tr. 86. From her perspective, Jasmine had always done something like act bad or pushing her mother. Mother never just got mad and lashed out. Tr. 86-87. She also indicated that Mother had a two-bedroom apartment in Georgia. Tr. 87.

Mother then testified. Tr. 91. At one meeting, DHS said the plan was to return Nykyla back home and that the only thing left to do was the home study. The DHS worker indicated to her that she said the only thing that she needed to know was that Nykyla had a bed in Mother's house. TR 94.

The worker said that Mother and Nykyla had a good relationship, that they had a good bond, and that they were close. Tr. 100. She also communicated well with the foster mother and would talk to Nykyla about any issues. Tr. 101. Nykyla and Jasmine are two totally different people, like night and day. Mother didn't have the same issues with Nykyla that she had with Jasmine. Tr. 102. At 14 years old, Jasmine was totally different. She would run away, have sex

in my house, steal, hit her, and hit the other kids. Tr. 112. She has a very, very good relationship with Nykyla. Tr. 102.

Mother described what she learned in therapy. Ms. Grace told her to deal with an issue out of love, never out of anger. When you deal with stuff out of anger, it will spiral down. Tr. 103. Previously, she felt like she dealt with Jasmine it was out of anger and not out of love because she didn't understand why she was doing the things that she was doing. Tr. 104.

Mother made a final statement about her ability to parent Nykyla. She believed that, based on the one year of counseling and the two sets of parenting classes, she was equipped to help Nykyla if that time ever came. Tr. 105. She believed she could provide a stable home for her. She wanted her daughter home, but Nykyla was going to need extra, extra love and attention and support because of everything she's been through in the past three years. Nykyla was diligent, hadn't ran away, hadn't messed with boys, and didn't have issues that other 14-year-olds did because Nykyla wants to be good. She wants people to appreciate her and does not want anybody to be disappointed in her. Tr. 106.

She also learned in therapy to deal with the system better. Before, she hated the system and the people in it. Now, she realized that she has to put her daughter first no matter what and just do what she was supposed to do. Tr.117. She felt like she was bullied. She felt like every time they made me a promise, they turned on the promise. Even from the very beginning, she was told that only Jasmine was going to be on the petition to take temporary custody of the children. Tr. 121. Nevertheless, she admitted that she contributed to the problem. She resisted and fought. She fought the only way she thought she could, which was to say she was sovereign and not subject to the jurisdiction of the state. She left Michigan to get a job. Tr. 122.

The judge set another date for the parties to give closing arguments. Tr. 124.

July 30, 2013 Continued Best Interests

The parties gave their closing arguments. Mother's attorney argued that there was never any evidence that Mother abused or neglected Nykyla. Tr. 9. He further pointed out that all parties agreed that Nykyla would be reunited with Mother after a successful home study, and that Mother was only missing one document for the DFACS home study. Tr. 12.

The L-GAL recommended that Mother's rights not be terminated. Instead, he stated that a guardianship would be the best alternative for Nykyla so that she could have stability and permanency, while leaving open the possibility that Mother could one day get her things together and come request that guardianship be terminated. Tr. 22-23.

The judge concluded by saying that she would issue a written opinion. Tr. 23-24.

Court's Opinion and Order

The court issued an Order Following Hearing to Terminate Parental Rights on August 29, 2013. The Order did not state a basis for termination under MCL 712A.19b. See Exhibit 2.

The court issued a written opinion on the same date. The opinion stated the court previously found there was clear and convincing evidence that that there was a statutory basis for terminating Mother's parental rights. The court set this forth in an order dated January 23, 2012. That was the order from the first trial when the court found that termination was not in Nykyla's best interest. The court set forth no factual or legal findings based on the most recent termination trial. Instead, the opinion proceeded straight to the best interests findings. See Exhibit 3.

Procedural History

Respondent-Appellant Mother Tracy Reed's ("Mother") appealed from the August 29, 2013 Order of the Oakland County Circuit Court terminating her parental rights to her daughter Nykyla McCarthy (DOB 06/02/1999). On its own motion, the Court of Appeals ordered on November 8, 2013 that Appellant file a delayed application for leave to appeal within 21 because it determined that Appellant's Claim of Appeal was not filed timely. On December 2, 2013, Appellant filed a Motion to Reconsider, arguing that the Claim of Appeals was indeed filed timely. The Court of Appeals denied this motion and ordered Appellant on December 16, 2013 to file the Delayed Application for Leave to Appeal within seven days. Appellant filed the Application on December 23, 2013, which was denied by the Court of Appeals on January 29, 2014.

Appellant filed her Application for Leave to Appeal with this Court on February 25, 2014. This Court remanded this case to the Court of Appeals for consideration as on leave granted.

Appellant filed her appeal with the Court of Appeals on May 12, 2014. On September 23, 2014, the Court of Appeals remanded the case back to the trial court to make brief, definite, and pertinent conclusions of law regarding the statutory grounds for termination.

The trial court issued an Order on remand with the required conclusions of law on December 12, 2014.

The Court of Appeals issued its Opinion of Remand affirming the trial court order terminating Mother's parental rights.

ARGUMENT

Standard of Review:

The trial court's decision that a ground for termination has been proven by clear and convincing evidence, and the court's decision regarding the child's best interest are both reviewed by a clearly erroneous standard. MCR 3.977(J), *In re Rood*, 483 Mich 73, 90-91 (2009). "A finding is 'clearly erroneous' if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id* (internal citations and quotations omitted). However, whether proceedings complied with a party's right to due process presents a question of constitutional law that appellate courts review de novo. *Tr.* 91.

I. THE STATE FAILED TO COMPLY WITH THE REQUIRED PROCEDURES AND VIOLATED MOTHER'S DUE PROCESS RIGHTS

Parents possess a fundamental interest in the companionship, custody, care and management of their children, an element of liberty protected by the due process provisions in the Fourteenth Amendment of the United States Constitution and article 1, § 17, of the Michigan Constitution. *In re Rood*, 483 Mich 73, 91-92 (2009). Mother has a constitutionally protected right to be a parent. In order to deprive her of that fundamental liberty interest, the state needed to comply with required procedures and adhere to standards of fundamental fairness. Because DHS and the court failed to do so in this case, Mother's right to due process was violated.

The state failed to comply with the required procedures with regard to Mother's home study. As a result, the state violated her due process rights. A respondent may claim procedural error in an action brought by the state to terminate this right if the state *fails to comply with the required procedures* and its failure may be said to have *affected the outcome* of the case. *In re*

Rood, 483 Mich. 73, 107 (Mich. 2009) (emphasis added).

The Interstate Compact process was used unlawfully, and, as a result, Mother's due process rights were violated. Michigan has enacted the Interstate Compact on the Placement of Children, MCL 3.711 *et seq*., which authorizes the DHS to "obtain the most complete information on the basis of which to evaluate a projected placement before it is made." MCL 3.711, Art I(c). Article III(1) of the compact states:

> No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

This language plainly limits the compact's scope to foster care and pre-adoption placements. Additionally, Article VIII of the compact provides in relevant part:

> This compact shall not apply to:
>
> (a) The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

The use of the Interstate Compact in this case is a fatal defect to the proceedings. Mother was denied due process. Mother was going to fail the home study because of her child abuse and neglect history. Yet, that was what DHS was requiring her to do. The worker stated that "DFACS still has to complete their home study because otherwise Nykyla could not be sent there." Tr. 6 (July 30, 2012). DHS insisted that she go through a pointless process that everyone knew she was not going to pass. Mother told the court that immediately, but the court persisting in following this flawed process. DHS then used her failure against her in their petition to terminate her rights. They asked her to do the impossible, and asked the court to terminate her

rights because she was not able to do it. DHS cannot create an insurmountable obstacle for a parent and then blame the parent for failing to remove the obstacle. "[A] state may not, consistent with due process of law, create the conditions that will strip an individual of an interest protected under the due process clause." *In re B & J*, 279 Mich App 12, 19; 756 N.W.2d 234 (2008) (DHS had parents deported to Guatemala and then filed a petition to terminate their rights because they were not in the country). This flies in the face of any concept of fairness and due process.

The process that DHS utilized was, by the plain language of the statute, not supposed to be used in her situation. As Mother repeatedly pointed out during the hearings leading up to trial, she was set up to fail. In addition to the fact that Mother was unlawfully forced to participate in the Interstate Compact process, she was forced to jump through completely unnecessary hoops. DHS said that all they wanted to do was to make sure that there was a bed and food for Nykyla. If that was the case, then why were they making her get two letters of reference and a physical exam? It was not necessary to do any of that in the first place, so Mother's failure to do so does not establish a sufficient basis to terminate here rights.

Even more egregious is the Mother supplied her own due process, but DHS and the court blocked her. Taking matters into her own hands, Mother paid for a home study out of her own pocket. DHS had the results of that home study, complete with pictures.

> I do have a home study in my hands done by a private agency in Georgia that -- I spoke with someone today. They assessed the home and found it to be -- I did -- the residence is well suited for family occupancy. Parent Training Center -- the Parent Center recommendation is six traditional parenting education classes for the mother still. So there is a home study.

Tr. 6-7 (July 30, 2012). DHS put Mother in a no-win situation. She was not going to pass the DFACS home study. Nonetheless, Mother found a way out of that situation,

paid for it, and gave it in a gift-wrapped package to DHS. The court refused Mother's solution of paying for her own home study with no logical reason, despite repeated protestations from Mother.

The second element of a procedural due process argument is that the procedural defect must affect the outcome of the case. The court's insistence that Mother pass the DFACS home study clearly affected the outcome of this case. What makes the home study issue so concerning is that it was the ultimate reason that Nykyla was not returned home. The court clearly indicated that the only real impediment to returning Nykyla home was making sure that there was appropriate housing. The judge said "I really don't want this be about like jumping through this hoop and jumping through this hoop. I want it to be if Ms. Reed's home is appropriate, safe and Nykyla can return to her and be cared for there, I'll sign that order." Tr. 30 (June 11, 2012). Ms. Lambertsen testified that DHS would have returned Nykyla home if she passed a home study. Tr. 15 (March 14, 2013). Had DHS done things appropriately instead of processing the paperwork through the Interstate Compact, Nykyla would have been returned to Mother soon after June 11, 2012, almost a full two years ago. Since this defect so clearly and tragically affected the outcome of the case, it is a due process violation.

Because the trial court violated Mother's procedural due process rights, the Court of Appeals Court should have reversed and remanded. This Court should reverse the decision of the Court of Appeals because it is clearly erroneous and will cause material injustice.

II. THERE WAS NOT CLEAR AND CONVINCING EVIDENCE THAT THERE WERE STATUTORY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

Parents possess a fundamental interest in the companionship, custody, care and management of their children, an element of liberty protected by the due process provisions in the Fourteenth Amendment of the United States Constitution and article 1, § 17, of the Michigan Constitution. *In re Rood*, 483 Mich 73, 91-92 (2009).

Given the Constitutional implications, demonstrating parental unfitness is a weighty burden. The fundamental liberty interest of the parent "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State," *Santosky*, *supra* at 753, nor can a termination decision be based solely on a belief that the child's best interests mandates the result. *In Re JK*, 468 Mich 202, 211(2003). As noted by the United States Supreme Court, little doubt exists "that the Due Process Clause would be offended '[if] a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children . . . for the sole reason that to do so was thought to be in the children's best interest.'" *Quilloin v Walcott*, 434 US 246, 255 (1978).

The court may only terminate parental rights if it finds by clear and convincing evidence that one or more of the statutory criteria are met. *Rood*, *supra* at 101. The petitioner bears the burden of proving a respondent's unfitness. MCR 3.977(A)(3). In a child custody dispute between the parent and an agency, "the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence." MCL 722.25(1). Our Supreme Court has described clear and convincing evidence as proof that:

produces in the mind of the trier of fact a firm belief or conviction as to the truth of

> the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Evidence may be uncontroverted, and yet not be 'clear and convincing.'

Kefgen v Davidson, 241 Mich App 611, 625 (2000).

Once at least one statutory ground for termination has been established by clear and convincing evidence, the trial court must terminate parental rights unless the trial court finds that termination is not in the child's best interests. MCR 3.977(F)(1), *In re Trejo*, 462 Mich 341, 360 (2000).

The trial court in this case determined that there was clear and convincing evidence that Mother's rights should be terminated pursuant to 712A.19b(3) and that termination was in the best interests of the children. However, that decision is clearly erroneous.

Pursuant to MCR 3.977(G), a:

> court must order termination of the parental rights of a respondent and must order that additional efforts for reunification of the child with the respondent must not be made, if the court finds on the basis of clear and convincing evidence . . . that one or more facts alleged in the petition (a) are true, and (b) come within MCL 712A.19b(3), unless the court finds by clear and convincing evidence that termination of parental rights to the child is not in the best interest of the child.

The Supplemental Petition requests termination of Mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (3)(g) and (3)(j). The Petition alleges that Mother has not substantially complied with her PAA, that 182 or more days have elapsed since the initial disposition order, that the conditions which brought the children into care continue to exist, and that there is no reasonable likelihood that the conditions can be rectified within a reasonable time considering the ages of her children. The Petition further alleges that Mother fails to provide proper care or custody for the child and there is no reasonable expectation that Mother will be able to provide care and custody within a reasonable time considering the child's age. The Petition further

alleges that based upon the conduct or capacity of Mother, there is a reasonable likelihood that the children would be harmed if returned to her care. None of those allegations were proved by clear and convincing evidence and for the court to find so was clearly erroneous.

A. MCL 712A.19b (3)(c)(i) Conditions Continue To Exist

MCL 712A.19b(3)(c)(i) states that parental rights should be terminated if the parent "was a respondent in a proceeding, the court entered an initial dispositional order, 182 or more days have elapsed since the order, and the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time." (3)(c)(i).

We commonly refer to this basis for termination as a parent's failure to comply with the PAA. However, this Court's previous decisions make it clear that our shorthand is an oversimplification. "A parent's failure to fully comply with a Department of Social Services treatment plan does not alone establish neglect, at least in the absence of clear and convincing evidence that the treatment plan was *necessary* to improve the parent's alleged neglectful behavior." *In re Mason*, 140 Mich.App. 734, 737 (1985) (emphasis added). So, the statute makes it clear that the prosecutor has to be provide clear and convincing evidence that a parent failed to complete the PAA. However, in order to meet the *Mason* criteria, the prosecutor has to prove by clear and convincing evidence that the PAA was actually *necessary* to improve the parent's neglectful behavior.

In general, the prosecutor did not provide clear and convincing evidence that Mother did not complete the elements in the PAA. And, even if Mother did not complete some of the elements of the PAA, the prosecutor did not provide sufficient evidence to meet the *Mason*

"necessary" element. As in *Mason*, Mother's failure to fully comply with the PAA does not establish neglect.

DHS alleged that Mother did not fully comply with the PAA; specifically, that she: (1) discontinued therapy without court approval, (2) failed to visit Nykyla twice within the three-month period, (3) failed to comply with the home assessment, and (4) failed to provide DHS her most recent proof of income. I will address each of those elements of the PAA.

(1) Mother did continue therapy for a while after the last review hearing, but did eventually discontinue her therapy. However, even though Mother discontinued therapy, her therapist indicated that Mother had been in therapy for a year and that further therapy wasn't really needed until Nykyla was returned to Mother. Tr. 17, 19 (June 1, 2013). Therefore, Mother may not have followed the PAA to the exact letter, but she had completed everything she needed to do to improve her past neglectful behavior according to the uncontroverted testimony of Mother's therapist. Thus, the prosecutor failed to present evidence to satisfy the *Mason* "necessary" element. Therefore, Mother had already completed what was necessary to improve her alleged neglectful behavior and *Mason* dictates that termination would not be appropriate under this subsection.

(2) The subject of Mother's visitation was almost as ludicrous as the home study requirement. First of all, the court's visitation order kept changing. This presented an ever-moving target to Mother, which is a due process issue as well. Originally, the PAA stated that Mother should have once-weekly phone contact with Nykyla. Tr. 10-12 (March 5, 2012). By all accounts, Mother spoke to her daughter almost every day. Mother bought Nykyla a tablet so that they could Skype almost every day. Yet, the court said that was not enough. The court wanted Mother to share a meal with her and ordered Mother to come to Michigan more and see Nykyla.

Eventually, DHS stated that when Mother was in Michigan that she needed to be with Nykyla the entire time that she was here. Tr. 10 (July 30, 2012). Every time Mother met DHS's requirements, the court said she should be doing more.

Further, both Mother and Nykyla testified that Mother visited. To require that Mother provide some kind of verification that she made a car trip was impossible. Mother and Nykyla, the only two people who would truly know whether the visits took place, gave uncontroverted testimony that Mother did in fact make the visits. As a result, there was not clear and convincing evidence that Mother didn't meet the court's requirements. There is no sound legal basis for this requirement and under *Mason*, Mother's alleged failure to do so is not a statutory basis for terminating her rights.

Further, the court's order was not necessary to improve Mother's neglectful behavior in the first place. As such, the court cannot penalize her for failing to follow it. This is similar to *In re AXW*, unpublished opinion of the Court of Appeals, entered 05/26/2011 (Docket No. 299622) (Attachment 4), where a parent lived in South Carolina and the trial court ordered unreasonable parenting time requests. When the parent failed to make the visits, the trial court terminated her parental rights. This Court reversed, stating:

> The circuit court's parenting time orders placed virtually insurmountable obstacles in respondent's path. If she complied with the orders, she likely would lose her job in South Carolina, concomitantly placing FW, Jr.'s stability at great risk. Rather than recognizing these realities and employing alternate methods of visitation, such as web cameras, letters, telephones or text messaging, the circuit court persisted in requiring respondent to prove her fitness by complying with orders that lacked a sound legal basis.

In this case, as in *AXW*, the court imposed a heavy burden on Mother by requiring her to come once a month. Mother should not have to prove her fitness by complying with an order to

come once a month even though it lacked a sound legal basis. Nevertheless, Mother actually met that requirement. Mother did come up once a month. Mother said she saw Nykyla once a month. Nykyla said she saw her Mother once a month. Tr. 20 (October 29, 2012). Even though Mother complied with that requirement of the PAA, the court then said she should spend all her time with Nykyla when she was here. This makes this case even more egregious than *AXW*. Not only did the court want her to come all the way to Michigan from Georgia to visit her child, the court wanted her to spend all her time with her, regardless of other business Mother may have to conduct. There is no evidence that spending every moment of Mother's time in Michigan meets the *Mason* "necessary" element because, like in *AXW*, there was no sound legal basis for the stringent visitation requirement.

(3) With regard to the home study, Mother had actually met the requirement of having an appropriate home. The court heard evidence that an agency in Georgia did a home study and found that it was appropriate. Tr. 6-7 (July 30, 2012). It had been introduced at one of the review hearings and was incorporated into the evidence at trial when the prosecutor asked that the court take judicial notice of the legal and social files. Whether that evidence came from their DHS entity or another agency that they contracted with is unimportant. A competent, independent agency found the home to be appropriate, and that is what DHS and the court said that they wanted to see.

To complicate matters, the DHS worker who was previously on the case originally told Mother that the contract agency home study was enough. Tr. 101, 128 (March 14, 2013). Then Ms. Lambertsen testified at trial that it wasn't enough. If DHS can't make up its mind about whether Mother needed to pass the DFACS home study, then there certainly is not clear and convincing evidence that Mother need to meet this requirement in the PAA.

Further, the result of DFACS home study was completely irrelevant to Mother's ability to parent Nykyla. In fact, it said nothing other than that Mother was "uncooperative." Tr. 12 (March 14, 2013). Stunningly, Mother's lack of cooperation was referenced by the court from the bench. The court indicated that it was just more of the same, that Mother was uncooperative. What does that have to do with her ability to parent? Nothing. Mother's unrebutted testimony at trial was that she failed the DFACS home study because she did not provide medical records. Tr. 107 (March 14, 2013). Since the results of the DFACS home study do not address the reason Nykyla came into care, Mother's failure to comply with this requirement is not a basis for termination. Mother's medical records have nothing to do with her ability to effectively parent Nykyla Mother's rights should not be terminated on this ground.

(4) Similarly, Mother had provided proof of her income. At the July 30, 2012 review hearing, the DHS worker said that Mother provided her with the income tax return for 2011. Tr. 7. A few months later, however, the DHS worker testified that Mother should have given her more than just her 1040. Once again, in flies in the face of due process to tell Mother and the court at a review hearing that she has complied with one of the PAA requirements and then come to trial and testify that she didn't. To add insult to injury, when Mother pointed out how unfair it all was, she was accused of being obstinate. Without an explanation of why proof of income in addition to her 1040 was necessary, the prosecutor has not provided clear and convincing evidence that Mother didn't have sufficient income to take care of her daughter.

At this point, Mother has already successfully addressed all of the "conditions that led to the adjudication." She had complied in every reasonable way with the PAA and had demonstrated that she benefitted from it. All these "conditions that led to the adjudication" no longer "continue to exist." MCL 712A.19b(3)(c)(i). Even if Mother didn't fully comply

complete every aspect of the PAA, there was not clear and convincing evidence that every aspect of the PAA was "necessary to improve the parent's alleged neglectful behavior." *In re Mason.* Therefore, the burden of proof of clear and convincing evidence has not been met with regard to this subsection of the statute.

B. MCL 712A.19b (3)(g) Proper Care And Custody

MCL 712A.19b(3)(g) provides that parental rights should be terminated if "without regard to intent, the parent fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide care and custody within a reasonable time considering the child's age." The prosecutor failed to provide clear and convincing evidence of this, so Mother's rights should not be terminated on this ground.

It's unclear how Mother failed to provide proper care or custody for Nykyla. She had sufficient income and appropriate housing. She had taken parenting classes, so she was equipped with tools to be a better parent to Nykyla than she had been to Jasmine. Everybody agreed at the recent review hearings that Nykyla was on her way back to Mother as soon as someone could verify appropriate housing. As stated above, DHS and the judge agreed that Mother's only deficiency with regard to "proper care and custody" was an appropriate home. The worker told her Mother that all she needed to know was whether Nykyla had a bed in the home. Tr. 94 (July 15, 2013). Nykyla indicated that Mother had a two-bedroom apartment. Tr. 87. Therefore, she had appropriate housing. DHS and the judge had already said on the record at previous hearings that Mother was able to provide proper care and custody, so to come to any other conclusion at trial is incongruent with a prior finding. Therefore, her rights should not be terminated on this ground.

C. MCL 712A.19b(3)(j) Likelihood Of Harm

MCL 712A.19b(3)(j) provides that parental rights should be terminated if "there is a reasonable likelihood that the child will be harmed if he or she is returned to the home of the parent based on the conduct or capacity of the child's parent." There trial court terminated on this ground. However, Mother asserts that there was not clear and convincing evidence to support termination under this subsection.

Even though DHS included this subsection in their Petition as a basis for termination of Mother's parental rights, it's unclear that this was actually a basis for the court's terminating Mother's parental rights. There was no testimony at trial that would indicate what harm would befall Nykyla if she were returned home. Except for vague worries that maybe Mother hadn't benefitted from parenting classes or therapy sufficiently, there was nothing.

The only proof the prosecutor presented about the likelihood of harm if Nykyla was returned home was from the psychologist. But he was purely speculating. Why would he think she hadn't changed her parenting style? She did her parenting classes and a year of therapy. Nevertheless, even though Mother had done what was required of her, he thought she would revert back. What else does she need to do to prove herself? If there is something else, then DHS should have told her that she needed to do it. Tr. 64 (July 15, 2013).

Mother indicated that she had learned to deal with her children out of love and not anger. This demonstrates that Mother had actually learned something valuable out of therapy, but the psychologist performing the exam would never know that because he never talked to Mother's therapist. Id. at 104.

So, the only person who could testify about how Mother treated the children was Nykyla, and she testified that Mother only responded to Jasmine's behavior. So, it is apparently accurate that Jasmine was a large part of the problem, and not just Mother. Id. at 86-87. Nykyla even

testified that she thought that her mother would discipline her verbally, not by hitting her, if she returned to her. Id. at 83. Nykyla indicated that she was never afraid of her mother and always wanted to go back home. Id. at 85. If her mother did hit her, she would tell someone. Id. at 83. She would feel comfortable living with her mother, and that is what she wanted to do. If Mother had not harmed her in the past and there was no real proof that she would do so in the future, and if Nykyla didn't fear any harm, the prosecutor failed to prove this element by clear and convincing evidence.

Accordingly, the trial court should not have terminated on this ground.

This Court should reverse the decision of the Court of Appeals because it is clearly erroneous and will cause material injustice.

III. THERE WAS NOT A PREPONDERANCE OF EVIDENCE THAT TERMINATION OF PARENTAL RIGHTS WAS IN THE BEST INTERESTS OF THE CHILD

In the present case, the trial court never should have reached the best interests consideration, as the statutory basis for termination were not shown by clear and convincing, legally admissible evidence. *In Re JK*, 468 Mich 202,214-215; 661 NW2d 216 (2003). It is only when at least one ground has been proven by clear and convincing evidence that the court must consider this issue. *In re Trejo, supra;* MCL 712A.19b(5). Since none of the statutory grounds cited by the trial court to terminate Mother's parental rights were supported by clear and convincing evidence, the trial court should never have reached the issue of best interests in the first place. Accordingly, the trial court's decision must be reversed.

However, even if a statutory basis was found, it was not in Nykyla's best interests to terminate Mother's parental rights. The prosecutor did not provide a preponderance of evidence that was in the best interests of the child to terminate Mother's parental rights, which provides an

additional reason why reversal of the trial court's decision is warranted. MCL 712A.19b(5).

The best interest provision of subsection 19b(5) provides that the court needs to find that termination is in the best interests of the children after it finds that there is a statutory basis for termination. The prosecutor must prove this by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90 (2013). In other words, even after the court finds that it *could* terminate parental right, it needs to examine whether it *should*. The primary beneficiary of this opportunity is intended to be the child. Mother asserts that, even if this Court finds that Mother's rights could have been terminated under MCL 712A.19b(3), it was clearly erroneous for the trial court to find that termination was in the best interests of the children.

The court's reasoning did not support a best interests findings. The court did not address what was best for Nykyla. The court addressed Mother having enough chances. But what about Nykyla? Is she getting any permanency by being in foster care? She could get bounced around again. What about the bond between mother and child? It was clear that Mother and daughter had a bond, and not just a friendship bond as indicated by the psychologist. Nykyla said that she didn't want to disappoint her mother and that she felt ashamed when her mother found out she was fighting. That is not just a friendship bond. Nykyla said that Mother would give her suggestions on how she could do things differently when she was having problems. Once again, this is a normal parent-child bond, not a friendship bond.

The court needed to focus on Mother's ability to parent. Her therapist, the one that has seen her for a year, not the one that met with her a couple times to administer some psychological testing, said she believed that mom has changed and grown and can parent effectively. The DHS worker, who is intimately familiar with this case, said as recently as July 30, 2012 that it was not is Nykyla's best interests for the court to terminate parental rights.

The psychologist from the Oakland County Court clinic, Dr. Park, testified that he thought it was in Nykyla's best interests to terminate Mother's parental rights. He based that merely on Mother's supposed lack of insight and possible problems that might arise with Nykyla. He stated that Nykyla was starting to have problems in school, but that Mother maintained that Nykyla was a good kid and that she just needed to be moved to a different school. He further stated that if Nykyla was going to have problems like Jasmine did, that there was a possibility that Mother would be abusive to Nykyla like she was to Jasmine. That was pure speculation that didn't seem to be based on anything. In order to bolster that opinion, he stated that that Nykyla was starting to have the same kinds of problems as Jasmine. But when asked on cross, Dr. Park stated that the two girls were very different and Nykyla was not having anywhere near the same type of trouble that Jasmine did. Further, when Nykyla testified, it became clear that Mother's solution to Nykyla's fighting problem was correct. Nykyla was at a new school where there were a lot more fights and was being bullied or pressured. Even though Dr. Park stated that Mother came up with the wrong solution, he never indicated what the right one was.

Finally, the L-GAL in this case agrees with Mother that it is not in Nykyla's best interests to terminate Mother's parental rights. Mother adopts the statements and arguments set forth in the L-GAL's brief.

It was not in the Nykyla's best interests to have Mother's rights terminated and the trial court clearly erred in reaching that decision. This Court should reverse the decision of the Court of Appeals because it is clearly erroneous and will cause material injustice.

Respondent-Appellant Tracy Reed requests that this Honorable Court REVERSE the Court of Appeal's decision to affirm the trial court and REVERSE the August 29, 2013 Order of

the Oakland County Circuit Court terminating her parental rights to her child Nykyla McCarthy (DOB 06/12/1999) and: (1) remand the case to the Oakland County Circuit Court, Juvenile Division with instructions to order reunification of Respondent-Appellant with her children or (2) remand the case to the Oakland County Circuit Court, Juvenile Division for further proceedings consistent with this Court's opinion and/or (3) order any other remedy that this Court deems fit and appropriate.

February 12, 2015

Susan L. Loveland (P66005)
Attorney for Respondent-Appellant
PO Box 431993
Pontiac, MI 48343
(248) 563-2061

IN THE SUPREME COURT

Appealed from:
Oakland County Circuit Court
Juvenile Division
Circuit Court Case No. 07-739244-NA

Court of Appeal Case No. 318855

In re Nykyla McCarthy.

PROOF OF SERVICE and NOTICE OF FILING

SUSAN LOVELAND states that on February 12, 2015, she served a copy of the Application for Leave to Appeal, Notice of Hearing, and Proof of Service:

Via U.S. mail to:
Stephen A. Raimi (P19195)
Lawyer-Guardian Ad Litem
30800 Telegraph Rd Ste 1705
Bingham Farms, MI 48025

Via e-file to:
Jessica R. Cooper (P23242)
Oakland County Prosecutor
1200 N Telegraph Rd
Pontiac, MI 48341

A Notice of Filing of this Application for Leave to Appeal was served on the clerks of Court of Appeals and trial court.

I declare that the statements above are true to the best of my information, knowledge and belief.

February 12, 2015

Susan L. Loveland

IN THE SUPREME COURT

Appealed from:
Oakland County Circuit Court
Juvenile Division
Circuit Court Case No. 07-739244-NA

Court of Appeal Case No. 318855

In re Nykyla McCarthy.

NOTICE OF HEARING

This Application for Leave to Appeal will be submitted to this Court on March 10, 2015.

February 12, 2015

Susan L. Loveland (P66005)
Attorney for Respondent-Appellant
PO Box 431993
Pontiac, MI 48343
(248) 563-2061